IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.79058-M of 2006

DATE OF DECISION: DECEMBER 15, 2006

The Haryana State Co-operative Apex Bank, Limited

...PETITIONER

VERSUS

M/s. P.S. & Co. and others

...RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. Subhash Ahuja, Advocate,
for the petitioner.

...

The petitioner, who is the complainant, has filed this petition under Section 482 Cr.P.C. for setting aside the order dated 24.10.2002 passed by JMIC, Chandigarh, whereby the complaint filed by the petitioner under Sections 406/409/420/468/471 IPC against the respondents, was dismissed; and order dated 14.2.2006 passed by the Addl.Sessions Judge, Chandigarh, whereby the revision preferred against the aforesaid order, has been dismissed.

I have heard the counsel for the petitioner and gone through the impugned orders.

The trial Court after taking into consideration the preliminary evidence led by the petitioner, came to the conclusion that prima-facie no offence against the alleged accused has been made out and, therefore, dismissed the aforesaid complaint. The trial Court while dismissing the complaint has come to the following conclusion:-

(1) Firstly the entire case of the complainant depends upon the contents of Ex.C12, which is photo-copy of

letter allegedly written by HDFC to complainant Bank informing them about payment of Rs.4 lac to authorised agent of HDFC, i.e., M/s. PS & Co. and M/s. S.S. & Co., but the complainant bank neither produced original of this document nor took the pains to get the existence of this document proved by summoning the record of HDFC or the authority who had issued it. Merely on the basis of photo-copy of a document, its existence cannot be accepted.

(2) Secondly, even for the sake of arguments, it is accepted that these documents are to be taken note of while deciding prima facie existence of ingredients of Sections 406,409,468,471 and 420 IPC, but still the complaint is not maintainable because in the entire complaint or in the testimony of CW1-S.C.Sharma, no act has been attributed to an individual person.

(3) Thirdly, from the bare reading of the complaint, it is evident that even if any any impersonation or forgery has been committed by the alleged accused, that is with HDFC who had issued Rs.4 lacs to the alleged companies because it is HDFC who had delivered Rs.4 lacs on the alleged impersonation of the companies arrayed as accused. In these circumstances, offence, if any has been committed qua HDFC and not the complainant bank.

(4) Fourthly, prima-facie offence against the alleged accused have not been made out because in the absence of proof of any entrustment of property upon the accused companies by the complainant bank, no offence under Section 406 IPC is made out.

(5) Fifthly, the alleged offences were committed in the year 1991 and knowledge of the same was got by the complainant on 21.9.1992, but the present complaint was filed on 12.8.1998.

Aggrieved against the aforesaid order, the petitioner preferred a

revision which was also dismissed by the Addl.Sessions Judge, Chandigarh, while coming to the following conclusion:-

(1) That the complainant bank failed to approach any policy agency or any court of law within the prescribed period and has filed this complaint after six years in the year 1998, though the alleged offence took place in the year 1991, without there being any proper explanation.

(2) That no direct transaction took place between the complainant and the accused and the payment of the commission amount has been made by HDFC to the accused allgedly by four cheques of Rs.one lac each but the complainant has failed to prove the fact of the receipt of such commission by the accused.

After hearing the counsel for the petitioner and going through the impugned orders, I do not find any illegality in the same. In my opinion, the instant petition is the second revision in the garb of Section 482 Cr.P.C. filed by the petitioner, which is not permissible under the Code.

Dismissed.

December 15, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE